

IN THE SUPREME COURT OF THE UNITED STATES

75-6933

OCTOBER TERM, 1975

NO. ~~75-6933~~

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SUPREME COURT, U.S.

NATHANIEL BROWN

Petitioner

-vs-

THE STATE OF OHIO

Respondent

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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TO: The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

OBJECTIONS TO JURISDICTION

There is no substantial federal question involved which would require this Court to review this case.

The questions herein presented were raised in the Court of Appeals of Cuyahoga County, Ohio, and the Supreme Court of Ohio. The Court of Appeals affirmed the convictions. The Supreme Court of Ohio refused leave to appeal and dismissed an appeal as of right for the reason that no substantial constitutional question exists in this case.

The Ohio Courts decided this case in accordance with statutes of the State of Ohio, the Constitution of the United States, and the applicable decisions of this Court. No substantial federal question is therefore presented by the petition for certiorari.

1.

QUESTIONS PRESENTED

Respondent submits that the question presented by the record in this case is more properly stated as follows:

1. The double jeopardy clause of the United States Constitution was not violated by the petitioner's convictions for operating an automobile without the consent of the owner and theft of the same automobile which occurred on different dates and in different counties.

STATEMENT OF THE CASE

On December 8, 1973 defendant, Nathaniel H. Brown, petitioner herein, was arrested and charged with operating a motor vehicle without the consent of the owner. On December 10, 1973 petitioner plead guilty to the charge, and was sentenced to a \$100 fine and 30 days. While petitioner was incarcerated in the Lake County Workhouse, he was charged with the theft of the same automobile which occurred on November 29, 1973 in East Cleveland, Cuyahoga County, Ohio.

On February 5, 1974, the Grand Jury of Cuyahoga County indicted petitioner for auto theft pursuant to Ohio Revised Code, Section 4549.04(A). Petitioner was arraigned on February 26, 1974 and plead not guilty. Subsequently, on March 18, 1974 petitioner withdrew his not guilty plea and entered a plea of guilty with the understanding that petitioner could raise the issue of double jeopardy by means of a motion to withdraw guilty plea and dismiss indictment. On November 26, 1974, the trial court overruled the motion and placed petitioner on probation.

Petitioner appealed his conviction to the Ohio Eighth Judicial District Court of Appeals which affirmed the conviction finding that the Lake County and Cuyahoga County offenses were based upon two separate and distinct acts of the petitioner. (See pages 13-18 of the Appendix to Petitioner's Petition for a Writ of Certiorari).

Petitioner's appeal to the Ohio Supreme Court was dismissed on March 19, 1976 sua sponte for the reason that no substantial constitutional question existed.

REASONS FOR DENYING THE WRIT

1. The double jeopardy clause of the United States Constitution was not violated by the petitioner's convictions for operating an automobile without the consent of the owner and theft of the same automobile which occurred on different dates and in different counties.

Where the two prosecutions and convictions of the defendant were based upon two separate and distinct acts of said defendant, one of which occurred on November 29, 1973 and the other on December 8, 1973, the double jeopardy clause of the United States Constitution was not violated.

Petitioner's claim of double jeopardy is not supported by law or fact.

In State of Ohio v. Best (1975), 42 Ohio St. 2d 530, the Ohio Supreme Court stated that:

"2. To sustain a plea of former jeopardy it must appear:

(1) That there was a former prosecution in the same state for the same offense;

(2) that the same person was in jeopardy on the first prosecution;

(3) that the parties are identical in the two prosecutions; and

(4) that the particular offense, on the prosecution of which the jeopardy attached, was such an offense as to constitute a bar."

Identity of offense consists of two components: (1) Identity of the statutory offense and (2) identity of the operative act.

The charge in Cuyahoga County arose out of a theft which occurred on November 29th in East Cleveland. The charge in Lake County arose out of the actions of the petitioner in operating the automobile in Lake County on December 8th. For these reasons, both the Common Pleas Court and the Court of Appeals held that both prosecutions were not based on the same act or transaction. Therefore, the petitioner's claim that the Cuyahoga County charges were barred by the Fifth Amendment's prohibition against double jeopardy is not valid.

CONCLUSION

In conclusion, the respondent submits that the petition herein fails to present any questions of constitutional dimension justifying review by the Court. The petitioner for a writ of certiorari should be denied.

Respectfully submitted,

JOHN T. CORRIGAN, Prosecuting Attorney
of Cuyahoga County, Ohio

BY: Charles R. Laurie
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Attorneys for Respondent

PROOF OF SERVICE

I, JOHN T. CORRIGAN, Prosecuting Attorney for Cuyahoga County, Ohio, one of the Attorneys for the State of Ohio, Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on this 9th day of July, 1976, I served a copy of the foregoing Brief in Opposition to Petition for Writ of Certiorari on the Petitioner's Attorneys, Robert Plautz and Glenn Billington, 1110 Euclid Avenue, Cleveland, Ohio, 44115 in a duly addressed envelope, with first class postage prepaid.

John T. Corrigan
Prosecuting Attorney of
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